

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL  
RECEIVED  
SEP 8 1995  
FEDERAL COMMUNICATIONS COMMISSION  
DOCKET FILE COPY ORIGINAL

In the Matter of )  
Policies and Rules Concerning )  
Unauthorized Changes of Consumers' )  
Long Distance Carriers )

CC Docket No. 94-129

OPPOSITION

MCI Telecommunications Corporation (MCI) hereby opposes, in part, the petition filed by the National Association of Attorneys General (NAAG) seeking reconsideration of the Commission's decision in Policies and Rules Concerning Unauthorized Changes and Consumers' Long Distance Carriers, CC Docket No. 94-129, FCC-95-225, Report and Order, rel. June 14, 1995 (Report and Order). Specifically, MCI opposes NAAG requests that would (1) require Letters of Agency or LOAs to be physically separate from promotional materials; (2) automatically punish interexchange carriers for conversions that have been reported; and (3) oblige customers to effectively commit twice to service.<sup>1</sup> On the other hand, MCI concurs with NAAG that, in view of widespread industry abuse and consumer confusion concerning LOAs cast in the form of check payments, the Commission should outlaw that practice altogether.<sup>2</sup>

---

<sup>1</sup> NAAG Petition at 2, 12, 16-17.

<sup>2</sup> Id. at 12-14. MCI also agrees with AT&T Corp. (AT&T) and Sprint Communications Company (Sprint) that the Commission's decision in its Report and Order to extend primary interexchange carrier (PIC) verification requirements to in-bound calls made by customers is both unsupported by the record and insupportable in any event. The former apparently has been recognized by the Commission which, on its own motion, stayed the effectiveness of

No. of Copies rec'd  
USA CODE

024

Written Contract Protection

As an important threshold matter, MCI agrees with Frontier Communications International Inc. (Frontier) that the Commission must at least clarify its Report and Order such that LOA rules are not applicable to customers with executed written contracts.<sup>3</sup> When a consumer enters into a written contract with a carrier, there can be little possibility of confusion as to the carrier selected by the consumer. Such contracts, for the most part, are entered into with business customers and usually follow from the give-and-take of negotiations between carrier and customer representatives. As a result, the rules regarding LOA content are superfluous. As Frontier correctly observes, a written contract is compelling evidence that a consumer has selected the long distance carrier with whom it has entered into a contract.<sup>4</sup> Thus, the Commission should clarify that a written contract complies with its LOA requirements; indeed, that it is the

---

its decision, pending reconsideration. See Order, FCC 95-388, rel. September 5, 1995. As AT&T, Sprint and MCI have shown, there is no evidence that in-bound calls have been, or are likely to become, a significant consumer problem in the marketplace. Furthermore, all have shown that substantial costs would be incurred if the in-bound verification requirement were to be required. Their combined annual costs are estimated at over \$50 million. Because, on balance, these forecasted costs more than offset the consumer benefits to be derived, the Commission should follow the lead of the Federal Trade Commission and exempt in-bound calls from any verification requirement.

<sup>3</sup> Frontier Petition at 1.

<sup>4</sup> Id. at 2. It should go without saying that the business relationship that results from the contractual relationship is motivation enough for the carrier not to "slam" the customer in connection with lines not covered in the contract. It would be foolhardy for the carrier to overreach in such fashion.

equivalent of -- and suitable for -- an LOA.

"Separable" versus "Separate" LOAs

MCI supports the Commission's new rule requiring that LOAs be "separate or separable" from promotional materials, since it strikes an appropriate balance between legitimate interexchange carrier marketing and consumer protection interests. Permitting a "separable" LOA allows the customer the benefit of a close and logical link between the interexchange offer and the customer acceptance document, the LOA, while at the same time giving the LOA an appropriate measure of importance. In contrast, NAAG's proposal that LOAs be physically separate from promotional materials<sup>5</sup> would increase, rather than reduce, customer confusion. Requiring an LOA to be a "stand-alone" document separates it from the context of a customer offer and the promises that interexchange carriers make in consideration of the customer's willingness to switch carriers.

Moreover, NAAG's proposal would deprive interexchange carriers of the flexibility needed to fashion reasonable sales programs and materials in order to compete effectively in the marketplace. Given AT&T's continued dominance in the interexchange services market, particularly the Long Distance Message Telecommunications Service (LDMTS) segment thereof, any marketing constraints imposed on AT&T's competitors that are not absolutely essential in protecting the legitimate interests of

---

<sup>5</sup> NAAG Petition at 2, 12.

consumers must not be allowed. Any regulation that would unduly restrict the marketing options of interexchange carriers can only hamper long-term competition since, in the short-term, the carrier that will benefit the most from intrusive marketing restrictions is AT&T. For this reason, NAAG's proposal to require "separate" marketing and LOA materials should be rejected.

#### Forgiveness of Charges

MCI also supports the new rule requiring that charges for calls handled by an unauthorized converter be adjusted to reflect an amount no greater than what the affected consumer would have paid to his or her original carrier. This rule adequately protects the interests of consumers because it dis-incentivizes those carriers who would purposely "slam" from doing so. Also, it reasonably protects carriers who innocently convert or otherwise are not at all responsible for conversions that occur.<sup>6</sup>

NAAG's proposal to absolve customers from paying for any services rendered after alleged unauthorized conversions would impose an unfair burden and a "penalty" on interexchange carriers without any evidence that an interexchange carrier has wilfully engaged in unauthorized conversions. The NAAG proposal would also encourage fraudulent claims and ultimately result in higher

---

<sup>6</sup> If a carrier "slams" in order to charge high rates to unknowing consumers, this provision will assure that it is unable to do so. In effect, only charges at the original carrier's rate could be recovered for the traffic handled.

consumer prices.

NAAG would assign to local exchange carriers (LECs) a major role in enforcement of this rule, by virtue of LEC involvement in characterizing customer carrier change requests as "unauthorized." One obvious question is whether it is appropriate from constitutional, regulatory, or practical perspectives to vest this significant responsibility in any private organization. It seems inappropriate for the Commission to promulgate any regulation that would give the LECs a primary arbiter role to determine penalties against their potential interexchange competitors.

Aside from these theoretical issues, LEC "unauthorized conversion" reporting historically has been inaccurate, misleading and unfair to legitimate interexchange carrier activity. LEC unauthorized conversion reports regularly reflect events that plainly are not the result of intentionally improper or misleading carrier activity. The LECs are not in-cented to probe deeply into customer requests to be switched back to their original carrier, and as a result, report many customer-initiated requests as unauthorized conversions. MCI's experience is that a substantial percentage of alleged unauthorized conversions are, in fact, not properly attributable to interexchange carrier intentional "bad acts."

Many "unauthorized conversions" are the product of unintentional human, clerical or computer errors, including those made by LECs. The extreme mobility of Americans results in data

that become outdated so quickly that data errors are common. Other system errors occasionally occur and are, almost without exception, quickly corrected. Another significant category of alleged "unauthorized conversions" is "buyer remorse." Many customers request a service change and then simply change their minds without admitting it. The LECs frequently, and incorrectly, report these occurrences as "unauthorized conversions." Still another very common occurrence involves cases in which one member of a household or business agrees to subscribe to an interexchange carrier's service and another individual in the household or business subsequently disagrees with the change. In each of these cases, no improper motive can be assigned to the interexchange carrier; and yet these situations are reported regularly as "unauthorized conversions."

Under the NAAG proposal, whenever a customer changed his or her mind due to buyers remorse, or wanted to switch back to his or her original carrier because another member of the household did not agree with the decision to switch, the event could, and probably would, be treated as an unauthorized conversion. In these cases, the interexchange carrier would be severely penalized for acts entirely beyond its control.

Despite NAAG's assurances to the contrary, its proposals would cause additional opportunity for fraud. While the vast majority of consumers are honest, some are not. NAAG's proposal would permit the unscrupulous to use interexchange services, claim an unauthorized conversion and, unless the interexchange

carrier were willing to fight this assessment through costly arbitration, be rewarded with free long distance service. It would be naive to assume that this would not quickly become a well-known opportunity within the very circles most likely to abuse it.

NAAG's proposal places an unjustified burden on the interexchange industry to disprove the existence of unlawful activity. It would require a large administrative dispute resolution mechanism to arbitrate disputes. The NAAG proposal would permit interexchange carriers to avoid these penalties only by affirmatively disproving the LEC-assigned reason for an alleged unauthorized conversion. Interexchange carriers would either have to absorb the costs of foregoing collection of long distance charges -- even though service was rendered and value received by customers -- or incur costs required to combat fraudulent claims of unauthorized conversions. Either way, these costs will inevitably be borne by consumers. In short, NAAG's proposal to expand the penalties in this area must be rejected.

#### Non-Negative Option LOAs

MCI supports the new rule prohibiting the switching of a subscriber who fails to respond to a solicitation, as these "negative option LOAs" have no legitimate place in the marketplace. Indeed, they are the very antithesis of consumer choice and fair competition. Unfortunately, under the mistaken belief that it is suggesting nothing more than a logical follow-

up measure to the elimination of "negative option LOAs," NAAG proposes to modify Section 64.1100 of the Commission's rules to provide that, if a consumer does not return a postcard provided in a customer information or "fulfillment" package that is sent after the consumer has agreed to switch carriers and communicated that intent to an interexchange carrier or a LED, his or her long distance service should not be changed.<sup>7</sup>

NAAG confuses "negative option LOAs" with the procedure pursuant to which interexchange carriers provide notice in customer information packages. The important distinction here is that in the latter procedure, consumers have already clearly made their choice and the follow-up communication is provided merely as additional confirming notice of the pending service change. This should not be confused with "negative option LOAs" which are sent to consumers "out-of-the-blue" and for which no prior sale has been achieved. NAAG's suggested approach, accordingly, should be rejected as it only would serve to encumber and lengthen the carrier selection process, to the benefit of the incumbent carrier.

#### LOA Check Payments As A Device To Slam

MCI supports NAAG in its position that the Commission should ban the use of LOAs in the form of carrier check payments to consumers.<sup>8</sup> As experiences throughout the country show, this

---

<sup>7</sup> NAAG Petition at 16-17.

<sup>8</sup> Id. at 12.



marketing approach constitutes the "most blatantly deceptive combination" of LOAs and promotional material.<sup>9</sup> As NAAG recognizes and reports, this approach was recently used by one carrier as a means to "defraud consumers out of millions of dollars...."<sup>10</sup> NAAG reports that in only a few months during 1994, more than 300,000 consumers were slammed and some \$13 million was collected as a result of the issuance of check payments by a carrier intending to deceive the public.<sup>11</sup>

The main problem with LOA check payments, as NAAG correctly notes, is that checks are widely understood by the public to be payments without condition.<sup>12</sup> Therefore, consumers simply do not expect to be entering into service contracts whenever they cash checks offered to them. Since consumers frequently receive a variety of small checks and coupons for rebates on purchases, they can be confused easily by checks that are mailed to them. In view of the widespread problems that have been experienced with LOA check payments and empirical evidence that the problem continues to escalate out of control, the Commission should ban the practice altogether, even though MCI itself would be

---

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id. at 4.

<sup>12</sup> MCI has used LOA check payments in its marketing efforts. And, although its efforts have resulted in a few complaints, it believes nevertheless that the practice should be abandoned because the entire interexchange industry has been tainted by the practice.

affected.<sup>13</sup>

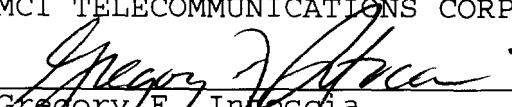
CONCLUSION

For the reasons set forth herein, the Commission should take into account this opposition when considering the various petitions for reconsideration filed by other parties.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By:

  
Gregory F. Intoccia  
Donald J. Elardo  
1601 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

Its Attorneys

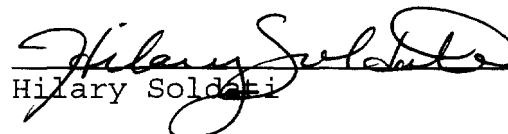
Dated: September 8, 1995

---

<sup>13</sup> Subject to a minor modification, MCI does not oppose the proposal by Allnet Communications Services, Inc., to modify the new rule -- in essence requiring LOAs in 2-PIC jurisdictions to indicate that two PICs are permissible -- to use the term "intraLATA," when it now uses the term "intrastate" and to use the term "interLATA" when it now uses the term "interstate." As the Commission is aware, the court in United States v. Western Electric Co. Inc., 569 F. Supp. 990 (D.D.C. 1983) did not establish Local Access Transport Areas or LATAs for Alaska or Hawaii. Therefore, should the Commission consider modifying the current 2-PIC language, it should permit LOAs to reflect either "interLATA" or "interstate" and either "intraLATA" or "intrastate."

CERTIFICATE OF SERVICE

I, Hilary Soldati, hereby certify that the foregoing "Opposition" was served this 8th day of September, 1995 by mailing copies thereof, postage prepaid, to the following persons at the addresses listed below:

  
Hilary Soldati

**\*HAND-DELIVERED**

Kathleen Wallman\*  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, D.C. 20554

William Caton\*  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

International Transcription Service\*  
1919 M Street, N.W., Room 214  
Washington, D.C. 20554

Allan Taylor  
Public Service Commission  
Division of Communications  
101 E. Gaines Street  
Tallahassee, FL 32399

Mark C. Rosenblum  
Robert J. McKee  
Peter H. Jacoby  
Seth S. Gross  
AT&T Corp.  
Room 3244J1  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Roy L. Morris  
Allnet Communication Services, Inc.  
Regulatory Counsel  
1990 M Street, N.W., Suite 500  
Washington, D.C. 20036

Charles H. Helein, Esq.  
Julia A. Waysdorf, Esq.  
Helein & Waysdorf, P.C.  
1850 M Street, N.W., Suite 550  
Washington, D.C. 20036

Peter Arth, Jr.  
Edward W. O'Neill  
Ellen S. Levine  
Attorneys for the People of the State of  
California and the Public Utilities  
Commission of the State of California  
505 Van Ness Avenue  
San Francisco, CA 94102

Michael J. Shortley, III  
Frontier Corporation  
180 South Clinton  
Rochester, NY 14646

Andrew D. Lipman  
James C. Falvey  
Margaret M. Charles  
Swidler & Berlin, Chartered  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007

Randall B. Lowe  
Piper and Marbury  
1200 Nineteenth Street, N.W.  
Washington, DC. 20036-2430

Charles C. Hunter  
Hunter & Mow, P.C.  
1620 I Street, N.W., Suite 701  
Washington, D.C. 20006

William Malone  
9117 Vendome Drive  
Bethesda, MD 20817-4022

Donald J. Hanaway  
Attorney General  
State of Wisconsin  
Department of Justice  
114 East State Capital  
P.O. Box 7857  
Madison, WI 53707-7857

Mary E. Burgess  
Assistant Counsel  
State of New York Department of  
Public Service  
Three Empire State Plaza  
Albany, NY 12223

John H. Carley, Deputy Attorney  
General  
Public Advocacy  
State of New York  
Department of Law  
120 Broadway  
New York, NY 10271

James E. Doyle, Attorney  
General  
State of Wisconsin  
Department of Justice  
123 West Washington Avenue  
P.O. Box 7856  
Madison, WI 53707-7856

Leon M. Kestenbaum  
H. Richard Juhnke  
Sprint Communications Co.  
1850 M Street, N.W., 11th Floor  
Washington, D.C. 20036

Cynthia B. Miller  
Associate General Counsel  
State of Florida  
Public Service Commission  
Fletcher Building  
101 East Gaines Street  
Tallahassee, FL 32399-0850

T. A. Sonneborn  
Assistant Attorney General  
Consumer Protection Division  
P.O. Box 30213  
Lansing, MI 48909

David J. Giles  
Assistant Attorney General  
State of Wisconsin  
Department of Justice  
123 West Washington Avenue  
P.O. Box 7856  
Madison, WI 53707-7856

Rowland L. Curry, P.E.  
Director  
Telephone Utility Analysis  
Public Utility Commission of Texas  
7800 Shoal Creek Boulevard  
Austin, TX 78757

Suellen Lambert Young  
Alabama Public Service Commission  
P.O. Box 991  
Montgomery, AL 36101-0991

Grant Wood  
Attorney General  
State of Arizona  
1275 West Washington  
Phoenix, AZ 85007

Winston Bryant  
Attorney General  
State of Arkansas  
200 Tower Building  
323 Center Street  
Little Rock, AR 72201-2610

Attorney General  
State of California  
1515 K Street, Suite 511  
P.O. Box 944255  
Sacramento, CA 94244-2550

Richard Blumenthal  
Attorney General  
State of Connecticut  
55 Elm Street, 7th Floor  
Hartford, CT 06106

Robert A. Butterworth  
General Attorne  
State of Florida  
The Capitol  
Tallahassee, FL 32399-1050

James E. Ryan  
Attorney General  
State of Illinois  
500 S. Second Street  
Springfield, IL 62706

Pamela Carter  
Attorney General  
State of Indiana  
219 State House  
Indianapolis, IN 46204

Thomas J. Miller  
Attorney General  
State of Iowa  
Hoover Building, 2nd Floor  
Des Moines, IA 50319

Carla J. Stovall  
Attorney General  
State of Kansas  
Kansas Judicial Center, 2nd  
Floor  
Topeka, KS 66612-1597

J. Joseph Curran, Jr.  
Attorney General  
State of Maryland  
200 St. Paul Place  
Baltimore, MD 21202-2021

Scott Harshbarger  
Attorney General  
Commonwealth of Massachusetts  
One Ashburton Place, Room 2010  
Boston, MA 02108

Mark C. Rosenblum  
Peter H. Jacoby  
AT&T  
Room 3245H1  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Hubert H. Humphrey, III  
Attorney General  
State of Minnesota  
102 State Capitol  
St. Paul, MN 55155

Douglas M. Ommen  
Office of the Attorney General  
Supreme Court Building  
P.O. Box 899  
Jefferson City, MO 65102

Ernest D. Preate, Jr.  
James E. Doyle  
Co-Chairpersons  
Telecommunications Subcommittee  
Consumer Protection Committee  
National Association of Attorneys General  
Hall of States  
444 Capitol Street  
Washington, D.C. 20006

Paul Rodgers  
Charles D. Gray  
James Bradford Ramsay  
National Association of Regulatory Utility  
Commissioners  
1102 ICC Building  
Post Office Box 684  
Washington, D.C. 20044

Frankie Sue Del Papa  
Attorney General  
State of Nevada  
Capitol Complex  
Carson City, NV 89710

William J. Cowan  
Mary E. Burgess  
New York State Dept. of Public Service  
Three Empire State Plaza  
Albany, NY 12223-1350

Betty Montgomery  
Attorney General  
State of Ohio  
30 East Broad Street, 17th Floor  
Columbus, OH 43266-0410

Maureen A. Scott  
Veronica A. Smith  
John F. Povilaitis  
The Pennsylvania Public Utility  
Commission  
P.O. Box 1365  
Harrisburg, PA 17021-1365

Jeffrey B. Pine  
Attorney General  
State of Rhode Island  
72 Pine Street  
Providence, RI 02903-2856

Charles W. Burson  
Attorney General  
State of Tennessee  
500 Charlotte Avenue  
Nashville, TN 37243-0497

Jeffrey Amestoy  
Attorney General  
State of Vermont  
109 State Street  
Montpelier, VT 05609-1001

Darrell V. McGraw, Jr.  
Attorney General  
State of West Virginia  
Room 26, East Wing  
State Capitol  
Charleston, WV 25305-0220